IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8535 of 1990

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KD PATEL & 1 - Petitioner(s)

Versus

PM PATEL & 2 - Respondent(s)

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Appearance :

MR JITENDRA M PATEL for Petitioner No(s).: 1,2.

MR VC DESAI for Respondent No(s).: 1.

Respondent Nos.2-A to 2E deleted.
MR PR ABICHANDANI, AGP for Respondent No(s).: 3.

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CORAM :HON'BLE MR JUSTICE AKIL KURESHI

Date : 14/07/2005

ORAL JUDGMENT

In the present petition, the petitioners have challenged the order dated 11.4.89 passed by the Collector, Kheda as well as the order dated 19.3.90 passed

by the Deputy Secretary, Revenue Department, government of Gujarat.

2. The issue involved in the present petition is with respect to certain mutation entries pertaining to land bearing survey No.573 of village Bandhani, Tal: Petlad admeasuring 43 Are 50 sq. mtres. In RTS Appeal No.36/86, the Deputy Collector, Petlad was pleased to reject the appeal filed by respondent No.1 herein challenging the mutation entry No.7212 in favour of the petitioners who had acquired the land pursuant to a registered sale deed. Respondent No.1 herein, however, preferred a revision application before the Collector and the Collector by his order dated 11.4.89 was pleased to allow the revision application and set aside the order passed by the Deputy Collector. The petitioner, therefore, approached the Deputy Secretary by filing further revision application. The revision application came to be turned down by the order dated 19.3.90. He has, therefore, filed the present petition challenging the above mentioned two adverse orders.

3. Upon perusal of the orders passed by the Collector and the Deputy Secretary, it is clear that the reason for setting aside the revenue mutation entry was that the sale

transaction according to the sale authorities was opposed to the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act (hereinafter to be referred to as the Fragmentation Act). The learned advocate for the petitioners submitted that the petitioners had purchased the said land through a registered sale deed. It was, therefore, not open for the authorities under the RTS proceedings to refuse to record such event of sale in the revenue records. If the transaction was opposed to the provisions of the Fragmentation Act, appropriate proceedings should have been taken under the said Act by the competent authority and the decision to set aside the entry was illegal. He relied on a decision of this Court in the case of Evergreen Apartment v. Spl. Secretary, 1991(1) GLR 113. He has further submitted that the sale in question was also not opposed to the provisions of the Fragmentation since the petitioners are holders of agricultural land.

4. The revenue authorities in RTS proceedings were concerned with the recording of the possession of the land in question pursuant to the registered sale deed. It is by now well settled that the authorities could not have set aside the mutation entires finding that the sale transaction is opposed to the provisions of the

Fragmentation Act and such powers would be with the competent authority inquiring into the sale transactions under the provisions of the Fragmentation Act. I, therefore find that in the present case, the authorities erred in setting aside the order passed by the Deputy Collector.

5. In the result, the petition is allowed. The impugned orders dated 11.4.89 passed by the Collector and dated 19.3.90 passed by the Deputy Secretary, Revenue Department are set aside and the order dated 19.11.87 passed by the Deputy Collector is restored. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)